

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13566 OF 2019

KRUSHNABAI ASHOK PAWAR AND ANOTHER
VERSUS
YAMUNABAI BALASAHEB BHAGWAT AND ANOTHER

Mr.P.S.Dikle h/f Mr.P.S.Pawar, Advocate for the petitioners.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 08/11/2019

PER COURT :

1. The petitioners are original defendant Nos. 1 and 2 in RCS No.448/2018. They are aggrieved by the order dated 09/07/2019 passed by the Trial Court vide which application Exh.19 filed by the plaintiff for seeking appointment of a Court Commissioner, even before the issues have been framed, has been allowed.

2. I find that this Court has consistently held that a Court Commissioner should not be appointed until the recording of oral evidence is over. Some of such orders/judgments are as under :-

(1) Syed Mushtaque Ahmad Syed Ismail and others Vs. Syed Ashique Ali Khan Hatdar [2011 (6) Mh.L.J. 334 = 2012 (2) Bom. C.R. 790],

(2) Nalubai Shinde and others Vs. Gopinath Shinde [2011(2)

Mh.L.J.991],

(3) *Dnyandeo Vithal Salke and others vs. Dagdu Kadar Inamdar*, 2017 (3) Mh.L.J. 314.

(4) *Chandrakant Kashinath Dike and others vs. Smt.Satyabhama Vishwanath Dike and another*, Writ Petition No.8877/2013 (Aurangabad Bench) decided on 17.01.2014.

(5) *Dhondiba Bapu Zaware vs. Santosh Paraji Zaware and others*, Writ Petition No.4756/2014 (Aurangabad Bench) decided on 08.12.2014.

(6) *Dipak Laxman Gadekar and anr. Vs. Trimbak Ravji Shirsath*, Writ Petition No. 11593/2015 (Aurangabad Bench), decided on 23/08/2017,

(7) *Mahadeo s/o Vaijanath Bembalge Vs. Chandrakala w/o Ramesh Athane*, Writ Petition No. 832/2018 (Aurangabad Bench), decided on 04/06/2018,

(8) *Dhondiram Nivrutti Pawar through L.Rs. Vs. Laxman Khashaba Pawar and others*, Writ Petition No. 1196/2017, (Bombay Bench), decided on 23/01/2018,

(9) *Sanjay Balasaheb Khandare Vs. Vivek Surinder Mahajan and another*, Writ Petition No. 4958/2018,(Aurangabad Bench), decided on 29/01/2018.

(10) *Bhika Mahadu Katkar and another Vs. Arjun Bhimraj Ghode*, WP No.1890/2019 (Aurangabad Bench) decided on 09/07/2019.

(11) *Sitaram Suklal Patil and another Vs. Vasudeo Suklal Patil*, WP No.9626/2016 (Aurangabad Bench), decided on 31/07/2017.

(12) *Sarjerao Nathu Bangar and others Vs. Namdeo Keru Bangar and others*, WP No.13441/2019 (Aurangabad Bench), decided on 07/11/2019.

3. In the case of Syed Mushtak Ahmed (supra), this Court has concluded that a Court Commissioner cannot be appointed for ascertaining the possession of a litigant over the suit property.

4. Issue notice to respondent No.1/original plaintiff, returnable on 11/12/2019. Until further orders, the impugned order dated 09/07/2019 shall stand stayed and in the event any report has been submitted by the Court Commissioner, the same shall not be acted upon.

5. Copies of the petition paper book shall be supplied for issuance of notice on or before 15/11/2019, failing which, this petition shall stand dismissed without reference to the Court on 16/11/2019.

(Ravindra V.Ghuge, J.)